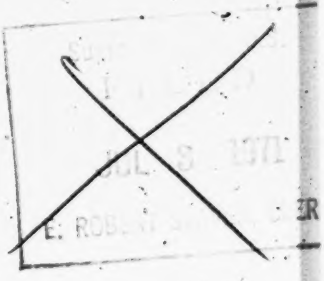
UNITED STATES SUPREME COURT



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STATE OF LOUISIANA, THROUGH
THE DEPARTMENT OF HIGHWAYS,
Plaintiff

vs.

CHARLES A. PATOUT ET AL.
Defendants

71-342

CONSOLIDATED NO. _____

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STATE OF LOUISIANA, THROUGH
THE DEPARTMENT OF HIGHWAYS,
Plaintiff

vs.

VERMILION DEVELOPMENT CO., INC.
Defendant

* * * * * * * * * * *

STATE'S
PETITION FOR WRIT OF CERTIORARI TO REVIEW FINAL DECISIONS OF THE LOUISIANA STATE SUPREME COURT

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UNITED STATES SUPREME COURT

STATE OF LOUISIANA, THROUGH
THE DEPARTMENT OF HIGHWAYS,
Plaintiff

vs.

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CONSOLIDATED NO. _____

STATE OF LOUISIANA, THROUGH
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Defendant

PETITION FOR WRIT OF CERTIORARI TO REVIEW FINAL DECISIONS OF THE LOUISIANA STATE SUPREME COURT

MAY IT PLEASE THE COURT:

The petition of the State of Louisiana, Through the Department of Highways, applying for writ of certiorari to review the final judgments of the Louisiana State Supreme Court rendered May 4, 1971, rehearing of which was refused June 28, 1971, in the consolidated cases, State of Louisiana, Through the Department of Highways, vs. Charles A. Patout et al., and State of Louisiana, Through the Department of Highways, vs. Vermilion Development Co., Inc., with respect, represents:

1(a): (1) The decision of the trial court (15th Judicial District Court, in and for the Parish of Lafayette, State of Louisiana) was rendered July 18, 1969, and is not included in any reporter system, but is set forth in full at pages 33-35 of the attached brief to the State Supreme Court; (2) the decisions of the Court of Appeal, Third Circuit, State of Louisiana, dated March 12, 1970, are reported at 236 So. (2d) 40 and 53 (1970), and are set forth in full at pages 86-119 of the above mentioned brief to the State Supreme Court, and (3) the decisions of the Louisiana State Supreme Court, dated May 4, 1971, with Per Curiam of June 28, 1971, accompanying refusal of rehearing, are appended hereto as reproductions of the original opinions.

1(b)i The final judgments of the Louisiana State Supreme Court to be reviewed are dated May 4, 1971, with a Per Curiam (not dated), of June 28, 1971, both of which dates are the dates of entry of the judgments, and are reported at 249 So. (2d) 167 and 179 (1971).

1(b)ii The application for rehearing was refused June 28, 1971.

1(b)iii The fact that 90% of the funds involved in an expropriation suit are paid by the Federal Government under the authority of 23 USCA § 101 et seq., from a Trust Fund created by tax upon fuel used in interstate commerce, is believed to confer on this Court the judisdiction to review an award to a landowner of the total value of five houses he constructed within what he knew was the proposed right of way for the construction of a segment of the National System of Interstate and Defense Highways (La I-10 Highway) in Louisiana, together with an award to the defendant of damages on land covered in a development contract but which land was not owned by him and which contract neither gave him the right nor the obligation to buy the land, together with an award some five times the amount he paid for the land purchased by him in anticipation that it would be acquired by the State for highway right of way, when such awards constitute unreasonable burdens upon the state and federal treasuries and unreasonably

hamper the accomplishment of the congressional policy and national intent to construct a System of National Defense Highways.

1(c): Questions presented for review:

1. The Substantial Federal Question: Decisions of the kind rendered by the State Supreme Court here places an unreasonable burden upon the federal and state treasuries and tend of defeat the congressional intent and purpose of establishing a National System of Interstate and Defense Highways, and tend to place an unreasonable burden upon interstate commerce in the waste of funds derived from taxation of fuel, used in interstate commerce, to create and replenish the Trust Fund established by the Congress for the construction of the System of Highways. The proliferation of such decisions as these, which can certainly be predicted and is now occurring, can defeat the purpose and intent of the various Federal Highway Acts adopted by the Congress.

2. May a State Court in fixing just compensation to be paid to a landowner, when the funds for the payment are almost exclusively from the Federal Government, make an award for five houses on the basis of reproduction cost when the record clearly shows that the landowner knew when he built the houses that he was building them within the right of way of the proposed highway construction which his engineer had located for him on the ground from the map obtained from the State, and which he had then purchased for the avowed purpose of "making a lot of money" from the State?

3. May a State Court in fixing just compensation, under the conditions recited in (1) above, make an award of damages to the defendant as an "owner" of land which he did not own, has no right or obligation to buy and, concededly, might never own?

4. May a State Court in fixing just compensation, under the conditions recited in (1) above, make an award

of approximately five times the amount paid by the owner, under the conditions outlined in (1) and (2) above?

The importance of these questions lies largely in the fact that the decisions here by the Louisiana State Supreme Court, has approved and will encourage sharp operators in the activities present here with the result that a substantial amount of federal and state funds will be wasted in benefitting the operators, which constitutes an unreasonable and unacceptable burden upon the national purpose to build a System of National Defense Highways, and an unreasonable burden upon the interstate commerce.

1(d) The governing law being construed and applied by the State Supreme Court consists of the following provisions of the Louisiana State Constitution of 1921.

(1) Article 1 § 2: "No person shall be deprived of life, liberty or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid." (Emphasis added.)

(2) The general provisions of 23 USCA 101, et seq.:

NOTE: The real problem is that of determining whether a landowner can scheme to increase the burden on the public's obligation to pay just compensation, and to determine what just compensation is when the scheme is attempted, when the funds are almost all derived from Federal Highway Trust Fund for the construction of the Interstate Highway System, where the decision to be reviewed is of such character as to place a crippling burden on the effort to carry out the policy of Congress of inducing states to engage in the construction and maintenance of a System of National Defense Highways, by the use of funds derived from taxation on fuels used in

interstate commerce.

1(e) The Department of Highways acquired certain property for the intersection interchange between the I-10 intersection with La-US 167 at Lafayette, Louisiana, from the defendants, during the course of which the defendants acquired the Department's map showing the projection of I-10 westerly from the intersection.

At approximately the same time that the public hearing had been held at which the plans for the construction of I-10 was made public, the defendants entered into a development agency contract with two landowners on a tract of land which had been owned by them in indivision but was then divided in kind between them.

The development contract with the northerly owner called for the defendants to develop the property for residential subdivision, paying all costs, with the landowner to join in all sales as vendor, accepting compensation for his land at $2,000 per acre.

This development plan progressed in a street by street fashion from its inception in 1958 to 1961, during which time the right of way needs for the interchange stub was acquired from the defendants on lots which they had purchased from the landowners, the brothers Richter.

Then, in 1961, the defendants had the proposed right of way west from the interchange projected by their engineer across the tract of land owned by the Richter brothers. The defendants then purchased the 61 lots which fell within the proposed right of way and, in 1964, all in a total departure from past practice and in no way in conformance to the development contract, they constructed five houses, in about a two-month period, in the $30,000 range of value. This was done at a time when the defendants knew that the right of way acquisition for the westerly extension across the Richter property was imminent.

The facts clearly show that the defendants bought the 61 lots and built the five houses with full knowledge that they were within the proposed right of way.

The trial court agreed with the State that "just compensation" would be a reimbursement of the defendants for their land purchase and salvage value for the houses, if the defendants engaged in the indicated activities in bad faith. The trial court then held that the defendants did not act in bad faith but really held that the defendants did not know that their activities were within the right of way.

On appeal by the State, the Court of Appeal made the following finding:

> "The Highway Department has established that the defendants knew with a high degree of certainty exactly where I-10 would be located at the time they exercised their right to purchase the land involved and when Vermilion Development constructed five houses on six of these lots. We are compelled to agree with the statement in the Highway Department's brief, that the construction of the five houses was 'quite obviously a final further effort to exact additional profit from the public's efforts to build highways.' We find that the defendants' purchase of the lots in question and the construction of the five houses was in bad faith and with the sole purpose of enhancing an award of damages to them. The trial court's determination to the contrary is manifestly erroneous.
>
> "A landowner who buys land or makes improvements within an area he knows will be required for a public improvement is entitled to be compensated for the land at an amount no greater than he paid and to be compensated

for the improvement at an amount no greater than the salvage value of the improvements. State v. Laird, 219 La. 567, 53 So.2d 674, 676 (1951); Eminent Domain, § 294, 27 Am. Jur. 2d 105, 6." 236 So. (2d) 40, 48 (1970) p. 100 of State Supreme Court brief by State.

Under this rule, the Court of Appeal fixed the just compensation for the houses at their salvage value but did not fix the award for the land at the reimbursement value as prescribed by its rule and thus the State sought writ of review to the Supreme Court, as did the defendants.

The State Supreme Court reversed the Court of Appeal's finding of bad faith and adopted the trial court's award.

In the firm conviction that the decisions in these cases constitute an unconscionable burden on the taxpayers and upon the federal and state treasuries and an unreasonable impediment to the policy of the Congress to build a System of National Defense Highways, the State now seeks a writ of review by the United States Supreme Court.

1 (f) The decisions in these cases have now become final in the highest Court in the State judicial system.

Although the federal question of the use of federal funds and the unreasonable burden placed upon the federal and state treasuries was implicit in the proceedings at all times, the question, as such, was never placed at issue, nor could it be until this time, in the nature of the case.

1(g) The application here is to review the decisions of a state court and not a federal court.

1(h) Argument

MAY IT PLEASE THE COURT:

The position of the Department of Highways in these cases has consistently been that a person could not acquire land or make improvements with the knowledge that the land and/or the improvements are to be required for a public improvement, with the purpose of making a profit from the public effort to serve the public need for public improvements.

The Department has contended throughout that the market value of the property acquired for a public improvement is not necessarily the measure of just compensation; that it must be higher in some instances where, for example, there might be no market or, as here, the landowner has deliberately and with knowledge acted to increase his profit, and the burden of the cost to be borne by the public in the construction of a public improvement.

The Department's position is based upon the decent and equitable principle that no citizen has the right to conduct his affairs so that the public is compelled to pay more for its public improvements than would otherwise be true, when those activities are with the knowledge and the purpose of profiting from the public effort to serve the public needs. This is similar to a principle long recognized by our courts that all persons must act to minimize damages which they have the right to assert against others, and which they cannot recover when they have negligently and knowingly maximized those damages.

The Department has not been compelled here to chart a new course in this effort, since our own Supreme Court adopted the principle we now espouse and did it in an expropriation suit, the decision of which (State v. Laird) is cited and relied upon in the above quotation (1-e) from the decision of the Court of Appeal in reversing the trial court in these cases.

Here we have, the State Supreme Court's devotion to a formula (market value as measure of just compensation) to the blind exclusion of the basic requirement that compensation in eminent domain acquisitions must be just, both to the landowner and to the public and, in this case, may not be such as to impose an undue burden on the federal and state treasuries, and operate as an unreasonable restraint upon the efforts of the Congress to implement the national purpose of building a System of National Defense Highways.

1(i&j) Copies of the final decisions of the State Supreme Court in these cases are appended hereto, together with the Court's Per Curiam and notice of refusal of rehearing.

WHEREFORE, petitioner prays that a writ of certiorari issue to Louisiana State Supreme Court and that, after due proceedings had, the rule of just compensation fixed by the Court of Appeal (State), Third Circuit (quoted above), be adopted and that just compensation be fixed in the case of State v. Charles A. Patout and Lawrence C. Richard, at $34,830 and State v. Vermilion Development Company, Inc., at $18,074, the reimbursement value of the land expropriated and the salvage value of the improvements expropriated.

State of Louisiana, through
the Department of Highways,

BY ATTORNEYS:

NORMAN L. SISSON

ROBERT J. JONES

CHESTER E. MARTIN

VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared

. . . . . CHESTER E. MARTIN . . . .

who, being first duly sworn, declared:

That he is one of the attorneys for the plaintiff, petitioner, in the above and foregoing application for writ of certiorari or review; that all the facts set forth therein are true and correct; that a copy of the application has been mailed to the defendants, through their attorney of record, Mr. Frank Smith, Jr., 221 West Main Street, P. O. Box 2609, Lafayette, Louisiana 70501, prior to presenting said petition to the United States Supreme Court for filing.

CHESTER E. MARTIN

Sworn to and subscribed before me this 26th day of July, 1971.

NOTARY PUBLIC